

6) Supreme Court U.S.
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No. 05-942 JAN 25 2006

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In The
Supreme Court of the United States

RAMONITO BIONG ROBOCA,

Petitioner,

v.

ALBERTO R. GONZALES,
ATTORNEY GENERAL OF THE UNITED STATES,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioner, a native and citizen of the Philippines, was convicted in the United States District Court for knowingly and willfully possessing a false identification document with the intent to use that document to defraud the United States in violation of 18 U.S.C. § 1028(a)(4). The facts underlying this conviction show that Petitioner presented a false New York city birth certificate in conjunction with an application for a United States passport.

Both the administrative agency and the Federal Court of Appeals for the Ninth Circuit determined that the facts forming the basis for this conviction satisfied the government's burden that there was clear and convincing evidence to show that Petitioner was otherwise subject to removal from the United States under 8 U.S.C. § 1227(a)(3)(D) as an alien who falsely represented himself to be a citizen of the United States.

In arriving at this decision, the Ninth Circuit Court of Appeals failed to ascertain whether a uniform federal definition existed to determine when and if an alien has falsely claimed to be a United States citizen and whether the conduct forming the basis for Petitioner's conviction fell within the parameters of such a definition.

In light of these facts:

1. Did the Federal Appeals Court correctly determine that the underlying facts of Petitioner's conviction under 18 U.S.C. § 1028 was sufficient to support a charge of removability under 8. U.S.C. § 1227(a)(3)(D)?

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PETITION FOR WRIT OF CERTIORARI

Ramonito Biong Roboca, the Petitioner, respectfully prays that a writ of certiorari issue to review the opinion and order of the United States Court of Appeals for the Ninth Circuit entered in this case on July 6, 2005 and October 27, 2005, respectively.

OPINIONS BELOW

The opinion of the Board of Immigration Appeals (App. B hereto) is unreported. The slip opinion of the Ninth Circuit Court of Appeals on the merits (App. A hereto) – that is subject to review – is unreported. The order of the Ninth Circuit denying the petition for rehearing en banc in such case (App. C hereto) is unreported.

STATEMENT OF JURISDICTION

The judgement of the United States Court of Appeals for the Ninth Circuit (Appendix B) was entered on July 2005. A timely petition for rehearing en banc was denied on October 27, 2005. (Appendix C) The jurisdiction of the Supreme Court is invoked under Supreme Court Rule 10(c), in that the Ninth Circuit has decided an important federal question in a way that conflicts with relevant decisions of this Court.

RELEVANT PROVISIONS INVOLVED

Section 237(a)(3)(D)(i) of the Immigration and Nationality Act; 8 U.S.C. § 1227(a)(3)(D) provides in pertinent part:

In general – Any alien who falsely represents, or has falsely represented, himself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any Federal or State law is deportable

Section 212(i) of the Immigration and Nationality Act; 8 U.S.C. § 1182(i) provides in pertinent part:

“The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(c) in the case of an immigrant who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien. . . .”

STATEMENT

I. Nature of the Case

This is a petition for review of the decisions of the Board of Immigration Appeals (“Board”) and the Ninth Circuit Court of Appeals finding Petitioner both removable under 8 U.S.C. § 1227(a)(3)(D) and ineligible to seek a waiver of inadmissibility under 8 U.S.C. § 1182(i).

II. Proceedings before the Immigration Court

Petitioner is a married male, native and citizen of the Philippines who entered the United States as a non-immigrant for visitor for pleasure on July 1990

through Los Angeles, California. Petitioner was subsequently convicted of knowingly and willfully possessing a false identification document with the intent to use that document to defraud the United States in violation of 18 U.S.C. § 1028(a)(4).

Upon execution of Petitioner's criminal sentence, the Bureau of Immigration and Customs Enforcement, which is a constituent part of the Department of Homeland Security, took the Petitioner into its custody. It then issued a Notice to Appear alleging that Petitioner was subject to removal from the United States.

The Notice to Appear alleged that Petitioner was a native and citizen of the Philippines and that he was admitted as a non-immigrant visitor on July 1990. The government also alleged that Petitioner remained beyond the period authorized under the terms of his non-immigrant visa. The government further contended that Petitioner falsely represented himself to be a citizen of the United States for the purpose of obtaining a United States passport.

Based on these factual allegations, the government charged Petitioner with removability for remaining in the United States longer than permitted under the terms of his visa in violation of 8 U.S.C. § 1227(a)(1)(B). Moreover, the government alleged that Petitioner falsely represented himself to be a United States citizen in violation of 8 U.S.C. § 1227(a)(3)(D).

Petitioner initially conceded that he remained in the United States beyond the terms of his visa. However, he denied the charge that he falsely represented himself to be a United States citizen. In a hearing conducted before an Immigration Judge on January 16, 2001, the Immigration

Judge sustained the charge of removability under 8 U.S.C. § 1227(a)(1)(B).

As to the government's charge of removability under 8 U.S.C. § 1227(a)(3)(D), the Immigration Judge in Arizona determined that section 1227(a)(3)(D) required that an individual sign or say that he is a citizen of the United States. The Immigration Judge stated that nowhere in the government's evidentiary material did it show that Petitioner specifically claimed to be a citizen of the United States. The Immigration Judge also noted that there was no attestation in the passport application itself stating that the applicant is a citizen of the United States.

The Immigration Judge took administrative notice that a United States passport can be issued to a national of the United States who is not a citizen and thus the submission of such an application with a false birth certificate without more could not sustain a charge that there has been a false claim to United States citizenship.

Petitioner then applied for adjustment of his status under 8 U.S.C. § 1255(a) so that he could obtain legal permanent residence on the basis of his marriage to a United States citizen. Moreover, he sought to obtain a waiver under 8 U.S.C. § 1182(i). The proceedings before the Immigration Court were then transferred to San Francisco, California since Petitioner eventually bonded out of government custody.

In a hearing conducted on May 1, 2002, an Immigration Judge in San Francisco, California disagreed with the prior Immigration Judge's ruling. Instead, the Immigration Judge in San Francisco agreed with the government and sustained the government removal charge under section 1227(a)(3)(D). In doing so, the Immigration Judge

denied Petitioner's applications for adjustment of status and a waiver of inadmissibility under 8 U.S.C. § 1182(i), since the determination that Petitioner falsely claimed to be a citizen precluded the Petitioner from seeking both forms of discretionary relief. Petitioner then appealed the decision to the Board.

III. Proceedings before the Board of Immigration Appeals

Before the Board, Petitioner detailed the allegations of error in the Immigration Judge's ruling. The government filed its response brief arguing in support of the Immigration Judge's decision. The Board, on October 2003, upheld the decision of the Immigration Judge and dismissed Petitioner's appeal. Petitioner timely filed a petition for review with the Ninth Circuit Court of Appeals.

IV. Statement of Facts

Petitioner is a married male, native and citizen of the Philippines. On March 27, 1992, Petitioner married Ms. Elizabeth Jumamil Pabingwit, a United States citizen. In 1995, Petitioner and his spouse purchased a home in Santa Clara, California. Together they have two United States citizen children. The Petitioner is the primary caretaker for the children. Petitioner's spouse is employed full time for Siliconix Inc. as a wafer fabrication specialist.

Prior to entering the United States, Petitioner worked as a chemical engineer for a mining and petroleum company. In the United States, the Petitioner has been employed as a warehouseman and plant engineer. He eventually left his position as a plant engineer to work at home and manage his investments.

In 1997, Petitioner's father passed away. Petitioner, however, was not able to attend his father's funeral. On August 25th, 1999, Petitioner executed an application for a United States passport at the United States Post Office in Santa Clara, California. He used the name of "Ramonito Biong Roboca." In conjunction with this application, Petitioner attached a certified copy of a New York City certificate of birth and a California Department of Motor Vehicle's driver's license.

On December 9, 1999, an agent of the State Department referred both the application and supporting materials to the Fraud program manager at the United States Passport Agency since the agent discovered that the certificate of birth was counterfeit. The investigation culminated in the filing of criminal charges against Petitioner. A warrant for Petitioner's arrest issued and on December 22, 1999, government agents arrested the Petitioner.

Petitioner eventually plead guilty to a violation of 18 U.S.C. § 1028(a)(4)(i), in that he willfully possessed a false identification document with the intent to defraud the United States. He was convicted of this offense as a Class A misdemeanor. The District Court imposed a sentence of 24 months probation. The Court did not impose a sentence to imprisonment.

The State Department's Office of Diplomatic Security referred the matter to the attention of the Bureau of Immigration and Customs Enforcement, a constitute part of the Department of Homeland Security. Bureau agents arrested the Petitioner and placed him into removal proceedings. The agency charged that Petitioner was subject to removal from the United States as articulated

above. Petitioner is currently under a final administrative order requiring his departure from the United States.

V. Statement of the Court of Appeals and Supreme Court Jurisdiction

The Ninth Circuit Court of Appeals properly exercised jurisdiction under 8 U.S.C. § 1252 since it reviewed a final administrative order requiring Petitioner to depart the United States. Venue was also proper in the Ninth Circuit under the same statute in that the judicial proceedings were completed by the Immigration Judge sitting in San Francisco, California in the Ninth Circuit.

The jurisdiction of this Court on application for writ of certiorari is invoked under U.S. Supreme Court Rule 10(c), as set forth above. That is, the petition for certiorari presents a substantial question for the reason that the Ninth Circuit Court of Appeals has an important federal question in a way that conflicts with relevant decisions of this Court.

The question to be resolved is whether the Ninth Circuit Court of Appeals could have properly determined that an alien violated 8 U.S.C. § 1227(a)(3)(D) without ascertaining whether a uniform federal definition existed to determine when and if an alien has falsely claimed to be a United States citizen and whether the conduct forming the basis for Petitioner's conviction fell within the parameters of such a definition. This Court's precedent and the precedent of the Federal Circuit Courts of Appeals has stressed the importance of developing uniform federal standards in the application of this country's federal statutes.